

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

PLANNED PARENTHOOD SOUTH  
ATLANTIC, et al.,  
Plaintiff,

Civil Action  
No. 1:23CV480

vs.

Greensboro, North Carolina  
June 28, 2023

JOSHUA STEIN, et al.,  
Defendants,

PHILIP BERGER and Timothy Moore,  
Intervenors.

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TRANSCRIPT OF MOTION FOR TEMPORARY RESTRAINING ORDER  
PROCEEDINGS

BEFORE THE HONORABLE CATHERINE C. EAGLES  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff ACLU:

BRIGITTE AMIRI, ESQ.  
KRISTI GRAUNKE, ESQ.  
LINDSEY KALEY, ESQ.  
JACLYN A. MAFFETORE, ESQ.  
ACLU of North Carolina

For the Plaintiff Planned Parenthood South Atlantic:

PETER IM, ESQ.  
Planned Parenthood Federation of America

\*\*\*\* APPEARANCES CONTINUED \*\*\*\*

Proceedings reported by stenotype reporter.  
Transcript produced by computer-aided transcription.

1 APPEARANCES:

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3 For the Defendant Attorney General Joshua Stein:

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SARAH G. BOYCE, ESQ.  
SRIPRIYA NARASIMHAN, ESQ  
Greensboro, North Carolina 27401  
(336) 332-6033

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7 For the Defendant Jim O'Neill:

8

KEVIN GUY WILLIAMS, ESQ.  
Bell, Davis & Pitt, P.A.

9

10 For the Defendant the Secretary of DHHS:

11

MICHAEL T. WOOD, ESQ.  
North Carolina Department of Justice

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13 For the Defendants North Carolina Medical Board and North  
Carolina Board of Nursing Board:

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MICHAEL E. BULLERI, ESQ.  
North Carolina Department of Justice

15

16 For the Intervenor Defendants:

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WILLIAM ELLIS BOYLE, ESQ.  
Ward and Smith, P.A.

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20 Court Reporter:

J. Allen, RPR  
United States District Court

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P R O C E E D I N G S

(All parties are present.)

(Court in session at 9:38 a.m.)

**THE COURT:** Good morning. We're here for a hearing on a motion for temporary restraining order in Planned Parenthood South Atlantic against Josh Stein, et al, 23CV480.

I have read everything, unless somebody filed something in the last 20 minutes. Okay, good. So I have read everything.

The first thing I would like to do is have counsel identify themselves and who they are here for. I did notice that somebody had entered an appearance for District Attorney O'Neill.

So, any way, let me get everybody to tell me who they are and who they are here for, starting at the plaintiffs' table.

**MS. GRAUNKE:** Good morning, Your Honor. I'm Kristi Graunke. I'm representing plaintiffs, here for the ACLU of North Carolina.

I'll pass to co-counsel to introduce themselves.

**MS. KALEY:** Good morning, Your Honor, Lindsey Kaley from the American Civil Liberties Union. I'm here on behalf of Dr. Beverly Gray, plaintiff.

**MR. IM:** Good morning, Your Honor. Peter Im, from Planned Parenthood Federation of America. I represent Planned

1 Parenthood of South Atlantic.

2 **MS. AMIRI:** Brigitte Amiri, from the ACLU,  
3 representing Dr. Gray.

4 **MS. MAFFETORE:** Good morning, Your Honor, Jaclyn --

5 **THE COURT:** I'm sorry, speak up.

6 **MS. MAFFETORE:** Jaclyn Maffetore from the ACLU of  
7 North Carolina, also on behalf of all plaintiffs.

8 **THE COURT:** Okay. And also at the other table where  
9 every one did not fit, it looks like, go ahead.

10 **MS. BOYCE:** My name is Sarah Boyce and I'm here on  
11 behalf of Attorney General Josh Stein.

12 **MS. NARASIMHAN:** My name is Sripriya Narasimhan --

13 **THE COURT:** Say again.

14 **MS. NARASIMHAN:** Sripriya Narasimhan, with North  
15 Carolina Department of Justice, here on behalf of Attorney  
16 General Stein.

17 **THE COURT:** Just so I cannot butcher your name, I'm  
18 going to try to say it again. Please correct me.

19 Narasimhan.

20 **MS. NARASIMHAN:** Narasimhan, but that also works, and  
21 I know you are talking to me.

22 **THE COURT:** I got very confused in an airport in  
23 Germany one time, and I'm saying Bond, which is the city, and  
24 they think I'm saying train and it is like it sounds exactly  
25 the same to me.

1           **MS. NARASIMHAN:** No worries, Your Honor.

2           **THE COURT:** I'll try to do better.

3           **MR. WILLIAMS:** Kevin Williams. I'm here on behalf of  
4 District Attorney Jim O'Neill.

5           **MR. BULLERI:** Good morning, Your Honor. Michael  
6 Bulleri. I'm here on behalf of the North Carolina Medical  
7 Board and the North Carolina Board of Nursing.

8           **MR. WOOD:** Good morning, Your Honor, Michael Wood  
9 with the Department of Justice, representing Secretary Kinsley.  
10 Of DHHS.

11           **MR. BOYLE:** Good morning, Your Honor, Ellis Boyle  
12 from the Wake County Bar. I am here representing Senator  
13 Berger and Speaker Moore.

14           **THE COURT:** Thank you. Okay. So all of the rest of  
15 the district attorney defendants are as yet unrepresented, it  
16 sounds like.

17           **MS. BOYCE:** Yes, Your Honor, that's correct. The  
18 Department is currently working out their representation, but  
19 given Mr. O'Neill's different position, it is taking a little  
20 bit of time to work through those wrinkles, but we do expect an  
21 attorney to notice an appearance soon.

22           **THE COURT:** They have all been served?

23           **MR. IM:** Yes, Your Honor, they have.

24           **THE COURT:** Now here is how I propose to go about  
25 this. First, somebody is going to tell me the status of the

1 proposed Bill which would amend the Act. I'll ask the  
2 plaintiff -- well, I don't know, maybe I'll ask Mr. Boyle to  
3 tell me, and then if anybody else wants to tell me anything  
4 different, you can.

5           Then, we are going to talk about the three -- I have  
6 broken things out into three categories.

7           One of them has a lot of subject categories, but my  
8 first one is the hospitalization, what I'm calling the  
9 hospitalization requirement, because I believe that every one  
10 agrees it doesn't go into effect until October 1st, so we'll  
11 just speak about that briefly, hopefully briefly.

12           Then there are the claims that it seems likely every  
13 one will agree will be mooted if the proposed bill goes into  
14 effect, and within that, there is several of the plaintiffs'  
15 claims, so we'll go over those and identify them.

16           Then the third one is the claims that aren't mooted  
17 if that Act passes, and we'll identify those, which presumably  
18 we will have done -- will become clear after the second part  
19 and, you know, so we get all that identified, and then we'll go  
20 through those and kind of -- well, let's talk about what we  
21 should do, what I should do, actually. I guess that's really  
22 all anybody cares about today.

23           We'll talk about them kind of in that order, and then  
24 at the end, I do want to talk about the motion to intervene to  
25 see if anybody has any objections. I know not all of the

1 district attorneys are represented yet so, you know, that  
2 Supreme Court case says what it says, but I'll hear from you on  
3 that.

4 Then, if I am able to give you a decision or even if  
5 I'm not, we'll talk about the future and briefing for  
6 preliminary injunctions and discovery and possibly combining  
7 things, expediting things, amended complaints, blah, blah.

8 Okay. Those are the things that sort of jumped out  
9 at me, but we'll talk about that, because it is my goal to get  
10 the case fully and completely resolved as quickly as possible,  
11 and even if you don't share that goal, it will soon become your  
12 goal, because, you know, I kind of drive a speed boat even in  
13 the ordinary case, and I don't have any desire to stretch this  
14 out.

15 Of course to the extent there is factual matters and  
16 factual disputes, you may have to have some discovery, and I'm  
17 sensitive to that, but we'll talk about that down the road.

18 Anybody have any problems with that proposed way of  
19 dealing with things or any sort of big topic things I may have  
20 left out?

21 From the plaintiffs' perspective? No.

22 This table?

23 **MR. BOYLE:** No, Your Honor.

24 **THE COURT:** Everybody is shaking their head no.

25 So the first thing is the hospitalization

1 requirement, and it looks like every one agrees -- and I think  
2 this seemed to me to be a pretty sensible way to read the Act,  
3 that it goes into effect on October 1st. I appreciate the  
4 plaintiffs' concerns about that, but I can't quarrel with your  
5 concern that it might go into effect July 1st, but certainly  
6 seems like a good sensible way to read it, that it goes into  
7 effect October 1st.

8           Let me just go down the row over here and see if  
9 anybody disagrees.

10           Ms. Boyce.

11           **MS. BOYCE:** No disagreement.

12           **THE COURT:** No, no, no.

13           Mr. Boyle.

14           **MR. BOYLE:** No, Your Honor. I think we would be the  
15 sticky-wicked bear and we made that stipulation in our brief  
16 that we filed, and I think the parties have, but for the rest  
17 of the DAs, all agreed to a very similar, if a little bit more  
18 robust version of that, that hopefully will be forthcoming to  
19 the Court and filed in form soon.

20           **THE COURT:** All right, great. Of course the DAs are  
21 an important part of this, because they are the people who  
22 ultimately enforce it, so possibly even if everybody here  
23 stipulates and agrees, I may still need to independently agree,  
24 or not.

25           **MS. AMIRI:** For part two of the Act there is no



1 criminal penalties, so in fact the district attorney -- we, of  
2 course, would like every one's stipulation on this, but they  
3 are not the enforcers for part two.

4           **THE COURT:** Thank you, very much. That was one of my  
5 questions to go through, which items had criminal and which had  
6 civil, so if I forget to do that, you all feel free to remind  
7 me.

8           Everybody on this end agree with that? Everybody is  
9 nodding yes. If anybody thinks no, stand up. Okay. Well,  
10 that's good. That lessens that.

11           So it would seem like as part of whatever order I  
12 enter, I can just say -- because I do actually think this -- I  
13 was going to give somebody a chance to tell me why it went into  
14 effect July 1st, but since nobody thinks that, my view was it  
15 was October 1st, and I can enter an order that says that, and  
16 you all can file your stipulation and I don't even really need  
17 to enter a TRO about that, and we can just brief it.

18           Everybody is nodding yes on a preliminary injunction  
19 schedule as we agree later. Anybody think differently about  
20 that?

21           Okay. So next I would like first the plaintiffs, and  
22 then we'll go down the row -- wait a minute, I forgot to ask  
23 you what the status of the proposed Bill was.

24           **MR. BOYLE:** Yes, Your Honor. So this Bill H-190,  
25 which I believe we attached a copy that had been passed by the

1 Senate as Exhibit 1 to our briefing that we filed yesterday  
2 morning. It passed through the Senate, I believe a 45 to two  
3 vote. And then it went to the House yesterday, and because  
4 they did not change it, I believe they were able to vote on a  
5 concurrence, and I handed out sheets that has the vote. I'd be  
6 happy to hand one up to Your Honor, but basically it was 115 to  
7 four in favor.

8           So it passed the House and there is a mechanism to  
9 get a Bill that passes both Chambers to the Governor's desk by,  
10 I believe special message is what it is called. I received  
11 copies of that by email last night and circulated that amongst  
12 the lawyers who have already made appearances.

13           I apologize, I've not had a chance to file it with  
14 the Court, and I got it late enough that I don't have a copy  
15 for the Court, but I believe all of the parties that are here  
16 today, the lawyers, any way, have seen a copy of that special  
17 message that was sent to the governor, and I believe the  
18 Governor has until July 7th to act on the pending legislation  
19 in front of him on his desk now.

20           **THE COURT:** If you will give me a little civics  
21 lesson. Correct me -- or maybe I should just let you tell me  
22 so I don't make a mistake in front of everybody. He has -- if  
23 he doesn't act on it -- I'll just go ahead. I don't mind  
24 making mistakes in front everybody. If he doesn't act on it,  
25 it becomes law?

1           **MR. BOYLE:** That's my understanding.

2           **THE COURT:** If he vetoes it, it goes back and the  
3 legislature can try to override the veto?

4           **MR. BOYLE:** That's correct, Your Honor.

5           **THE COURT:** Those would be the two options at that  
6 point?

7           **MR. BOYLE:** He could sign it also.

8           **THE COURT:** Oh, yes, right, thank you. He could sign  
9 it.

10          **MR. BOYLE:** Hopefully, he'll sign it.

11          **THE COURT:** Either of those would result in it going  
12 into effect. If he vetoes it, it goes back, you presumably try  
13 to override and if those votes are accurate, it seems very  
14 likely that that would happen.

15          **MR. BOYLE:** I don't think that the override votes  
16 would be the same, but I believe if recent history is any  
17 indication, there is a fair, if not a good chance it will be  
18 overridden, Your Honor.

19          **THE COURT:** If that were to happen, that process  
20 would add another, roughly couple of weeks, three weeks, a  
21 month, one day?

22          **MR. BOYLE:** Well, it reminds me about a joke about  
23 hurting cats and how many people you need to be in the room to  
24 make the vote for the override in July. Probably a bad joke,  
25 but it would take, I would say, two to four weeks, hopefully

1 sooner, but when you hit July and try and get votes in the  
2 General Assembly, it is my understanding that it might take a  
3 little bit longer than if it was, say, March.

4 **THE COURT:** All right. Thank you.

5 Does anybody -- does the plaintiff have a different  
6 perspective?

7 **MS. AMIRI:** No, Your Honor.

8 **THE COURT:** Or different information?

9 Anybody else at the defense table have a different  
10 perspective or different information or additional information?

11 Okay. Nobody.

12 Okay. So if it is signed by Friday at midnight, then  
13 my perspective is that that will moot some of the claims. If  
14 it is not signed, the claims are not yet moot, not mooted, and  
15 I have to figure out -- well, okay, then what do I do about the  
16 merits, the merits at the TRO stage?

17 I know it is the plaintiffs' position I still need to  
18 go ahead and enter the injunction, and I have read the  
19 intervenors' briefs. Their position is I don't need to do  
20 that.

21 So we'll talk about what happens if the Governor has  
22 not signed it, and I'll just tell you, I'm not entering an  
23 order at 11:00 p.m. on Friday night. I'm going to do something  
24 by noon, because otherwise, you know, it is kind of ridiculous.  
25 So I say noon. I might do it at nine o'clock in the morning.

1 You know, I do have other stuff to do.

2           So we'll -- some time on Friday, you know, unless the  
3 Governor signs it today or tomorrow, you know, I'm going to  
4 have to figure that out. So I'm thinking about what I'm going  
5 to do either way. But if he signs it, then I want to know,  
6 well, what is mooted and what is not, and if he doesn't sign  
7 it, then we need to talk about what to do, what I should do.  
8 And then we might need to have some sort of discussion about  
9 the merits of the ones that everybody agrees are mooted.

10           This is a little complicated. And then, you know, as  
11 part of that I want to know, well, what does the plaintiff say  
12 is not mooted. What do the defendants say is not mooted. And  
13 then hearing from you on the merits of all of that.

14           So can we just go through them claim by claim -- and  
15 I appreciated the intervenors' brief on that. You did that in  
16 a clear way as to your perspective. In fact, let me just get  
17 that open. That might be the easiest way for me to go through  
18 it.

19           **MR. BOYLE:** Your Honor, I have a loose copy if you  
20 would like to have that just for ease of reference.

21           **THE COURT:** I have it myself.

22           **MR. BOYLE:** Very good.

23           **THE COURT:** Docket 26. Let me get to the right page  
24 of what I'm thinking about. Hopefully it is what I remember.  
25 There we go. Okay.

1           We've already talked about the hospitalization  
2 provision. So I'm looking at page eight. Is it all right if  
3 we just use this list? It is pretty manageable, and that way  
4 we probably won't forget anything.

5           The first one would be the fetal homicide  
6 unconstitutionally vague problem. What is the plaintiffs'  
7 position on that?

8           **MS. AMIRI:** Your Honor, if the amendment passes, it  
9 would clarify that the fetal homicide statute has an exception  
10 for lawful abortions.

11          **THE COURT:** So basically, moot?

12          **MS. AMIRI:** That would moot the claim, yes, Your  
13 Honor.

14          **THE COURT:** Any defendant -- I know that is the  
15 intervenors' position from their brief. Correct, Mr. Boyle?

16          **MR. BOYLE:** Yes, Your Honor.

17          **THE COURT:** Any defendant think differently?

18          **MS. BOYCE:** No, Your Honor.

19          **THE COURT:** Okay. The ten week verification, you  
20 know, the 70 day versus twelve weeks problem, and the  
21 intervenors' have put that together with the pregnancy location  
22 requirement.

23               What is the plaintiffs' -- if you have a different  
24 view on those two, just tell me.

25          **MS. AMIRI:** Yes, Your Honor, they are different

1 indeed. So for the ten week versus twelve week limitation for  
2 medication abortion, we agree that the amendments would make  
3 clear that medication abortion can be provided through the  
4 twelfth week of pregnancy, so it would moot that claim.

5           However, with the pregnancy location requirement, the  
6 amendments do not clarify that and they are still vague and  
7 irrational and Mr. Im can speak to that, either now or later.

8           **THE COURT:** Later. I would like to get my list  
9 clear. And I think it is the intervenors' position that both  
10 of those would be mooted, correct?

11           **MR. BOYLE:** Your Honor, I think definitely the ten  
12 versus twelve week and 70 days is mooted as it relates to  
13 this -- so I tried to lift from the TRO brief and address it.

14           There were two parts, I believe, that dealt with the  
15 intrauterine location in the Bill, and this part, the first  
16 part, number two here was talking about it is vague. I think  
17 the new Bill, if it passes, it is not vague. I think that they  
18 do have, and they set forward an argument about it being  
19 irrational, I believe, in number seven on page 13. So --

20           **THE COURT:** Let me get the plaintiff to clarify. Are  
21 you saying it would still be vague and making -- we're just  
22 going to use like really summary words here, vague and  
23 irrational, that's still both of those arguments if the Bill  
24 passes, or just one of them?

25           **MR. IM:** Your Honor, it would be plaintiffs' position

1 that it would still be vague and irrational.

2           **THE COURT:** And it's the intervenors' position it is  
3 no longer vague, but they may -- it doesn't necessarily moot  
4 their argument about whether it has a rational basis?

5           **MR. BOYLE:** Correct, Your Honor. I believe the  
6 amendment would make it not vague. We object to the argument  
7 and oppose the argument about the rationality.

8           **THE COURT:** Right. Of course.

9           **MR. BOYLE:** Yes, Your Honor.

10           **THE COURT:** And which of those views, or some third  
11 view, we'll just go down the line.

12           Ms. Boyce.

13           **MS. BOYCE:** The Attorney General agrees that the  
14 amendments would moot the question of ten versus twelve weeks  
15 with respect to medication abortion. The Attorney General  
16 similarly agrees that the amendments would not moot the issue  
17 regarding the location or existence of an intrauterine  
18 pregnancy, but the Attorney General takes no position with  
19 respect to the vagueness of that provision, given his legal as  
20 opposed to medical expertise.

21           **THE COURT:** All right. What do the other defendants  
22 say?

23           **MR. WILLIAMS:** We concur with Mr. Boyle's  
24 representations to the Court.

25           **MR. BULLERI:** On behalf of the Medical Board and the



1 Nursing Board, we take no position.

2 **THE COURT:** We might need to spread those mics out a  
3 little bit. This room is beautiful, but it is a little hard to  
4 hear. Okay.

5 And for the secretary?

6 **MR. WOOD:** We take no position on this point.

7 **THE COURT:** Excuse me just one second.

8 Okay. The 72 hour mandate argument.

9 **MS. AMIRI:** Your Honor, I believe that the amendments  
10 would moot our claims in this regard as well. The shorthand on  
11 page eight is a little difficult to follow, but to the extent  
12 that these are addressing claims raised by the original  
13 provision, which will now be repealed, Section 90-21.83C.

14 **THE COURT:** That C, yes, that 83C.

15 **MS. AMIRI:** Yes, exactly, which cause a whole host of  
16 problems, which now will be repealed, and we agree that our  
17 claims with respect to that section would be moot.

18 **THE COURT:** I believe that's the intervenors'  
19 position as well.

20 **MR. BOYLE:** Yes, Your Honor.

21 **THE COURT:** Does any defendant have a different  
22 position?

23 **MS. BOYCE:** No, Your Honor.

24 **THE COURT:** I'll just say, you agree or either you  
25 have no position, which for purposes of today, I'm going to

1 treat the same way, if you don't want to be heard in  
2 opposition.

3           Okay. Then there is the reporting requirement. I  
4 think that's the three day requirement, and then this, let's  
5 see, the additional 72 hour mandate. I think we've really  
6 already maybe covered that. So this three day reporting.

7           **MS. AMIRI:** I think if I follow this, it is both with  
8 respect to the mandatory reporting requirement for minors,  
9 which was a three day limit, even though activities had not  
10 occurred at that time frame, so that requirement, reporting  
11 requirement for minors, our claim on that would be moot with  
12 the amendments, and I believe this number four on page eight of  
13 the intervenors' brief also refers to the insurance  
14 requirement.

15           **THE COURT:** Right, insurance.

16           **MS. AMIRI:** On checking, that would be moot as well,  
17 with Section 83C being repealed and the insurance provision  
18 changed and moved into a different part of the bill. So both  
19 of these things in number four on page eight of the  
20 intervenors' brief would be moot.

21           **THE COURT:** That's the intervenors' position, I  
22 believe.

23           **MR. BOYLE:** Yes, Your Honor.

24           **THE COURT:** Does any defendant want to be heard to  
25 the contrary?

1           **MS. BOYCE:** No, Your Honor.

2           **THE COURT:** So I already know the answer to the next  
3 one. The advise, procure, consent provision, and the  
4 intervenors' belief that the amendments take care of that and  
5 the plaintiffs' disagree and the Attorney General disagrees. I  
6 don't know what the other defendants think about that. I  
7 recall that you all told me perhaps they take no position, I  
8 just don't remember.

9           **MS. AMIRI:** Your Honor, I think that we're still  
10 figuring out our position. I think in light of the Attorney  
11 General's brief raising issues about whether cause could be  
12 interpreted to breach speech that is protected, I think we are  
13 assessing our position, and I think, however, it might be  
14 easily cured by some sort of agreement or stipulation by the  
15 parties if we all agree that helping people obtain abortions in  
16 states where it is lawful is not breached by this. I think we  
17 can probably find a resolution to this.

18           **THE COURT:** All right. Okay. So still an open  
19 question. I'll just put it that way.

20           What do you want to say, Ms. Boyce?

21           **MS. BOYCE:** The Attorney General's position as  
22 conveyed in the brief is that injunctive relief from this Court  
23 clarifying -- either clarifying the scope of that particular  
24 provision or enjoining enforcement of that provision more  
25 broadly to sweep-in conduct that would assist women in

1 obtaining abortions out of state would be necessary to avoid  
2 any concerns about due process.

3 **THE COURT:** And the other defendants?

4 Mr. Williams.

5 **MR. WILLIAMS:** Don't need to be heard on this issue,  
6 Your Honor.

7 **MR. BULLERI:** Same, Your Honor.

8 **THE COURT:** I'm taking that to mean that you have no  
9 position.

10 **MR. BULLERI:** Correct, Your Honor.

11 **MR. WOOD:** No position, Your Honor.

12 **THE COURT:** And the hospitalization argument, we can  
13 just put that off and talk about that later, if nobody thinks  
14 that the amendments are -- I mean, they don't even address  
15 that, the substance of that argument, so we don't actually need  
16 to talk about that one today any further, right? Okay.

17 Is there any other claim by the plaintiff that we  
18 have not touched on here?

19 **MS. AMIRI:** No, Your Honor.

20 **THE COURT:** Thank you for helping me understand that  
21 better.

22 So I think what I might like to do is for the ones  
23 that everybody is in agreement on, that they are going to be  
24 mooted if this Bill passes. If I can just hear from you on  
25 what does that mean for today.

1 I still need to decide if in case the Bill doesn't go  
2 into effect by whenever I get ready to issue an order on  
3 Friday, which is June 30th, yes, or I can -- I don't need to  
4 decide. You know, so kind of that question, and then of course  
5 to the extent you need to address the merits on it, go ahead.

6 We will maybe work through the merits of it in a  
7 little more detail, but still, being as efficient as we can  
8 with our time.

9 What is the plaintiffs' view on that?

10 **MS. AMIRI:** Yes, Your Honor. I can speak more  
11 globally to the plaintiffs' request and then Mr. Im can speak  
12 to the pregnancy location requirement.

13 Our position is that this Court should enter a TRO as  
14 to all of part one to prevent its enforcement on July 1st, and  
15 we could seek a TRO for 14-days, and ask the Court to get the  
16 parties to meet and confer no later than ten days, for example,  
17 and report to the Court about what is addressed in terms of  
18 what we've just gone through today.

19 I think the biggest issue for us, Your Honor, is  
20 compliance, that this does not give enough time for the parties  
21 to -- the plaintiffs to comply.

22 Even if the Governor signs the amendments on Friday,  
23 let's say or Saturday, there still is chaos that is being  
24 reaked and havoc that the providers face in having to try to  
25 comply with ever-shifting requirements as well as confusion on

1 patients' part as well. So we need time to comply.

2 Also the Department of Health and Human Services  
3 needs time to adjust the forms. The amendments change  
4 requirements that DHHS will have to adjust in the forms that  
5 plaintiffs must use.

6 So our position is, that we still need a time to  
7 comply, even if the amendments will moot many of our claims. I  
8 would point to Planned Parenthood of Wisconsin versus  
9 VanHolland, as we cited in our brief. In that case,  
10 Wisconsin's statute restricting abortion was passed on a  
11 Friday, took effect on Monday, and the Court said, "What is the  
12 urgency here in terms of compliance? We are preserving the  
13 status quo here that has existed for years. The difference  
14 between a July 1 effective date and a July 14th effective date  
15 is not going to harm the defendants or the intervenors'. They  
16 have not alleged as much. Instead, plaintiffs will suffer  
17 irreparable harm if the law takes effect without time to  
18 comply."

19 The concessions by the legislature with all of these  
20 changes also indicate that plaintiffs' would succeed on the  
21 merits of their claims.

22 So I would say that, you know, to the extent that the  
23 July 1st effective date is relatively arbitrary, the  
24 legislature did have a different effective date, October 1 for  
25 a different part of the law, and they would not be harmed by

1 this short period of time to allow us to assess all of these  
2 changes, come into compliance. The parties can meet and  
3 confer, figure out what is left, maybe the TRO could dissolve  
4 on its own, but it would give the parties time to assess the  
5 changes in this rapidly shifting landscape.

6 **THE COURT:** Just to confirm, the Bill amending the  
7 Act does not change the effective date, correct?

8 **MS. AMIRI:** That's correct, Your Honor. That's  
9 correct.

10 **THE COURT:** All right. Thank you.

11 **MS. AMIRI:** Would you like to hear from Mr. Im about  
12 the pregnancy location requirement at this point?

13 **THE COURT:** I think we'll wait for a second to get to  
14 the merits of it. I just want to think first about -- I don't  
15 know, I need a flowchart.

16 **MS. AMIRI:** Which is, we think, the easiest course is  
17 to block all of part one because it is very confusing and  
18 complex.

19 **THE COURT:** All right.

20 Ms. Boyce.

21 **MS. BOYCE:** Yes, Your Honor. The Attorney General  
22 set forth his position regarding the injunctive relief that  
23 must be entered by July 1st at the latest on page 21 of our  
24 brief. We have focused on the particular provisions that we  
25 believe would remain vague or that are currently vague and that

1 need to be enjoined before the law takes effect.

2           So the Attorney General, I don't think, has any issue  
3 with you waiting a little bit longer to see whether the  
4 Governor immediately vetoes these bills, but certainly before  
5 July 1st or by Friday, as Your Honor indicated.

6           It is the Attorney General's position that there  
7 needs to be injunctive relief on these provisions, lest clinics  
8 be uncertain as to what healthcare they can provide, and women  
9 be unable to access the reproductive healthcare that they need.

10           **THE COURT:** So are you saying that you agree with the  
11 plaintiff, that I should enjoin all of part one, or more  
12 narrow?

13           **MS. BOYCE:** No, Your Honor. We are urging you to  
14 enjoin the provisions that are listed on page 21 of our brief.  
15 And to be clear, there are several other provisions that we  
16 simply take no position on, given the Attorney General's  
17 expertise or lack thereof in the medical field.

18           **THE COURT:** Mr. Williams.

19           **MR. WILLIAMS:** Your Honor, on these issues I'm going  
20 to refer to Mr. Boyle. I was just retained in this case  
21 yesterday afternoon, so I'm playing a little bit of catch-up,  
22 as you might imagine.

23           **MR. BULLERI:** On these issues we take no position.

24           **THE COURT:** I'm sorry, speak up.

25           **MR. BULLERI:** On these issues, we take no position.



1           **THE COURT:** You are here for the licensing boards?

2           **MR. BULLERI:** Yes.

3           **THE COURT:** Okay.

4           And for the secretary?

5           **MR. WOOD:** Likewise, the secretary takes no position  
6 on these issues, Your Honor.

7           **THE COURT:** Mr. Boyle, I'll hear from you.

8           **MR. BOYLE:** Thank you, Your Honor. First, we would  
9 suggest that there doesn't need to be a TRO, given the passage  
10 of the Bill and likelihood that it will be enacted and become  
11 law in the near future.

12           If the Court is going to enter a TRO, we would  
13 certainly not think that it would be for the entirety of  
14 Section 1 of the Bill, and we would ask that it -- the Court  
15 only address the few items on page 21 from Attorney General  
16 Stein's brief.

17           And just some points about TROs in general that I  
18 think apply here, Your Honor. A TRO is an extraordinary  
19 measure. It is a remedy that should not be given lightly.  
20 Laws have the imprimatur and premise of being valid. This is a  
21 validly passed law in North Carolina, so it is a high burden to  
22 undo and enjoin, have a court enjoin a law passed by the  
23 General Assembly.

24           As for the timing, I certainly appreciate the  
25 argument that these are forms that have been there for years,

1 but this law passed on May 17th. It became effective after the  
2 veto was overridden, so really we're talking about six weeks,  
3 and the complaint wasn't filed for another month after that,  
4 which is fine. I'm not saying that as an attack or any type of  
5 fault but, you know, it sat there for a month and then a week  
6 or so after the complaint was filed, the TRO motion was filed.

7           So the timing issues that we're facing right now,  
8 have been -- and I should say before the veto was overridden,  
9 the law was actually passed originally on May 4th, I believe.  
10 So really, it is two months or so that these particular issues  
11 have been there.

12           The argument that there are forms that need to be  
13 changed, you know, I'm not at the DHHS. I don't know the  
14 particulars of that, but I don't know that they're very onerous  
15 at all to change to the extent they need to be changed. Again,  
16 I guess you would probably just revert back to the way they  
17 were somewhat before May 4th or May 17th, so it's not like this  
18 isn't something that had been in the process of changing.

19           If DHHS hasn't seen this law, which is actually  
20 attached if you look at Exhibit 1, Your Honor, it is 28 pages.  
21 The first 25 pages are technical changes and specific changes  
22 for DHHS. It is the DHHS Bill, as I understand it.

23           So I suspect they're aware of all of this and that it  
24 would not be terribly difficult for them to make these changes.  
25 I could be wrong and I don't mean to testify for them. I'm

1 just making the argument.

2           **THE COURT:** If it becomes effective, once it becomes  
3 effective?

4           **MR. BOYLE:** Once it becomes effective, yes, Your  
5 Honor.

6           **THE COURT:** If and when.

7           **MR. BOYLE:** Just again, I want to address that the  
8 comment was made that the easiest course would just be to enter  
9 a TRO and enjoin the passage, but that's not really the legal  
10 standard here, and we think that there isn't really a potential  
11 harm that could occur here.

12           The only thing standing between all of these mooted  
13 arguments becoming the new law that addresses those issues and  
14 not is, the Governor signing it, and that could happen ten  
15 minutes ago, a day from now, by July 7th, or he could veto it,  
16 but these are certainly problems with a very simple solution,  
17 one signature.

18           **THE COURT:** All right.

19           **MR. BOYLE:** So we would ask, Your Honor, that we  
20 don't think there needs to be a TRO at all. To the extent the  
21 Court is intending to do so, we would ask that it is very  
22 narrowly tailored to only the issues that are not mooted or  
23 that will be mooted when the technical and conforming bill  
24 becomes enacted into law.

25           One more point that I am blanking on, Your Honor, so

1 I'll sit down.

2 **THE COURT:** Thank you.

3 If I can have the plaintiff address the question that  
4 you raised, but perhaps in light of these arguments -- because  
5 I did have some question. I mean, all of your claims, each  
6 claim addresses a very specific part. I spent some time  
7 thinking, well, if I were to enjoin this, what would it look  
8 like, and I didn't really have a lot of trouble drafting an --  
9 I'm not saying I'm going to do this, I just like to practice  
10 and be ready for all eventualities.

11 You will know, I didn't really have any trouble  
12 drafting a TRO enjoining just the specific provisions, should I  
13 decide that that's appropriate as to some or all. So I  
14 wasn't -- I'm not yet persuaded that if I ruled in your favor  
15 on the merits as to likelihood of success on the merits, that's  
16 what I'm just going to talk about for a second here, that I  
17 need to enjoin the entirety of part one, so if you can address  
18 that.

19 **MS. AMIRI:** Yes, Your Honor. I think the overarching  
20 concern in part one, for example, is the lack of an exception  
21 for lawful abortion in the fetal homicide statute, and that is  
22 a flaw that runs, you know, far and wide in terms of the  
23 implication. And so I think that is one of the fundamental  
24 flaws in part one in general. And, you know, the conflicting  
25 and confusing nature of the entire Bill, the vagueness that

1 runs throughout, I think is also the -- is also a big concern  
2 of the overall Bill.

3 I will say, Your Honor, if you are inclined to enjoin  
4 parts of the Bill, we would like an opportunity to also address  
5 how the amendments now affect that process, because it is  
6 actually even made a little more complicated now by the  
7 amendments, because with .83C removed, there is now  
8 information, for example, that the insurance information be  
9 provided in another part and those forms from DHHS are not  
10 ready yet. So it wouldn't even now just be a question of going  
11 through our complaint and enjoining certain provisions. It  
12 would also now be looking at amendments and now the  
13 impossibility of compliance that is now raised by some of the  
14 amendments.

15 **THE COURT:** Does the statute require use of a DHHS  
16 form prepared by the secretary?

17 **MS. AMIRI:** It is my understanding that certain  
18 sections do, and perhaps DHHS can provide further information.

19 I think the practical implication, too, for folks on  
20 the ground, there is a 72 hour waiting period. People are  
21 being consented this week for procedures that will be happening  
22 after July 1, and so that chaos and confusion and getting  
23 resolution for them is incredibly important.

24 So I'll say that if there is an inclination by Your  
25 Honor to focus on certain provisions, we, at your request,

1 could propose an order to encompass some of the amendments as  
2 well, to give us time to get those forms or to comply with  
3 those statutory sections should they become law.

4           **THE COURT:** Well, just a general observation about,  
5 you know, the proposed injunction that the plaintiffs did  
6 attach to the motion or the complaint. You know, Rule 52,  
7 possibly, Rule 52 somewhere in there requires findings of fact  
8 and conclusions of law, requires it when I grant TROs and when  
9 I deny TROs, and it didn't really have any of those, which is  
10 fine, you know, I'm used to doing them.

11           I don't know that they need to be extensive.  
12 Typically they aren't, especially for TROs, but that is kind of  
13 a -- I can say that the one the plaintiffs asked me to sign is  
14 not good enough, because I don't think it satisfies Rule 52,  
15 you know, so I'm going to -- even if I were to give you  
16 everything you wanted, I can't sign that, and I'm not saying  
17 I'm going to.

18           Let me just repeat, I have not made up my mind about  
19 anything. All right.

20           Well, let's go through some of these things in a  
21 little bit more detail.

22           **MR. BOYLE:** Your Honor, very quickly. One point that  
23 is the relief that they seek is an injunction of the entirety  
24 of Section 1. What they really are going to achieve is  
25 declaring -- well, having the twelve week abortion standard

1 undone, and I'm not suggesting that is the main goal here, but  
2 it would be far, far beyond, and implicate far more issues than  
3 the fetal homicide statute, which understandably should have  
4 been caught in the cross-reference, should have been changed,  
5 and now it is going to be.

6           These are very far-reaching implications that were  
7 not argued or briefed, and if it is going to be considered  
8 further by the Court, we would certainly rest on the *Dobbs* case  
9 and suggest that that would be far beyond the simple vagueness  
10 and suggest that that would be far beyond the simple vagueness  
11 and rationality arguments that they actually brought in their  
12 lawsuit.

13           Thank you.

14           **THE COURT:** All right. Well, let's walk-through  
15 these kind of one-by-one, and I don't know, some of them  
16 probably don't take very much time, but I'll just tell you my  
17 general understanding of the law on most of these are vagueness  
18 challenges, I think is fair to say, and as the intervenors  
19 already pointed out, we have the well-known established  
20 restraining orders and preliminary injunctions, which I don't  
21 know that I need to repeat the four point test.

22           Apparently, I'm going to repeat it. Likelihood of  
23 success on the merits, irreparable harm, public interest, and  
24 what is the other one? Balance of equities. So, you know, got  
25 that. I have to make findings of fact, so put that aside.

1           The law on vagueness is that a statute has to give  
2 fair notice to persons of ordinary intelligence of what conduct  
3 is prohibited and provide sufficient standards to prevent  
4 arbitrary and discriminatory enforcements. That's from the  
5 *Manning* case, more or less out of the Fourth Circuit, and the  
6 *Carolina Youth Action* case this year says similar things.

7           I appreciated the Attorney General's brief on the,  
8 you know, kind of when a statute has conflicting requirements  
9 and the *Cardiff* case and the *Raley* case, directing my attention  
10 there, because it does sound like the Supreme Court has  
11 recognized, at least in some circumstances, when you have two  
12 provisions that say conflicting things, you know, something has  
13 got to give, basically. And there is a strict standard  
14 applying to laws that carry criminal penalties. Certainly even  
15 with civil remedies and professional discipline, which also  
16 exists here in this statute. You know, you can't have a vague  
17 statute where those are at issue, either. It is just a  
18 stricter standard for criminal law.

19           So that's my general understanding of the topics  
20 we're about to address. As we talk about each one, you know,  
21 it is pretty clear about the fetal homicide we're talking about  
22 criminal, but for the rest of them, you know, it would be  
23 helpful if everybody, you know, addresses are there criminal  
24 sanctions for the particular one we're talking about, or not.

25           So fetal homicide, who is going to talk?



1           **MS. AMIRI:** Your Honor, I will, and as you mentioned,  
2 I think this one --

3           **THE COURT:** Slow down.

4           **MS. AMIRI:** I will address this one. As Your Honor  
5 has indicated, this one is fairly straightforward. This is  
6 criminal penalties, severe criminal penalties for violating the  
7 fetal homicide law, and the elimination of an exception for  
8 lawful abortion is of deep concern and is in contrast to S.B.  
9 20, Section 90-21.81B, that specifically says when abortion is  
10 lawful.

11           So in one part of the code you'll have a section that  
12 says when abortion is lawful, and then the elimination of a  
13 lawful abortion exception in the fetal homicide statute,  
14 leaving plaintiffs to guess as to whether they may face  
15 criminal penalties if they provide lawful abortion under S.B.  
16 20.

17           So I think that, Your Honor, the standard you  
18 provided in terms of failing to give fair notice to the  
19 plaintiffs and fighting arbitrary enforcement, those are our  
20 concerns and plaintiffs are likely to succeed on the merits of  
21 their vagueness claim for the fetal homicide provision and lack  
22 of an exception for lawful abortion.

23           **THE COURT:** All right. Thank you.

24           For the Attorney General, or I guess Mr. Stein in his  
25 official capacity.

1           **MS. BOYCE:** We agree with that assessment of the law.

2           **THE COURT:** The licensing defendants?

3           **MR. BULLERI:** Yes, Your Honor, the same. We  
4 understand that to be a criminal provision.

5           **THE COURT:** Okay. And the secretary?

6           **MR. WOOD:** The secretary is taking no position on  
7 this point, Your Honor.

8           **THE COURT:** Mr. Williams, have you had time to think  
9 about it?

10          **MR. WILLIAMS:** I don't need to be heard on this  
11 point, Your Honor.

12          **THE COURT:** Okay. And for the invertenors'?

13          **MR. BOYLE:** Thank you, Your Honor. We're changing  
14 that.

15          **THE COURT:** And so --

16          **MR. BOYLE:** We agree it needs to be changed.

17          **THE COURT:** All right. Then that takes us-- let's  
18 split this up a little bit.

19               The ten week -- the 70 day, twelve week problem, who  
20 is going to talk about that?

21          **MS. AMIRI:** I'm happy to speak to that, Your Honor,  
22 in terms of the two completely inconsistent sections of S.B.  
23 20. In one place, in 90-21.81B, it says that abortion is  
24 lawful through the first twelve weeks of the pregnancy, either  
25 by medication abortion or surgical abortion, and then yet in

1 the other section involving the informed consent for medication  
2 abortion, it requires providers to verify that the pregnancy is  
3 no more than 70 days.

4           So where there are two inconsistent provisions that  
5 are completely contrary to each other, there has to be one, as  
6 you say, something has got to give. We think the better  
7 reading of the statute is that abortion be provided through the  
8 twelve week pregnancy.

9           **THE COURT:** Which seems to have been stated a kind of  
10 number of different places.

11           **MS. AMIRI:** Exactly. It is the primary provision in  
12 the law. Legislatures during the passage, including supporters  
13 of the Act, made clear in their public statements that it was  
14 intended to be through the twelve weeks of pregnancy for  
15 medication and not the ten week limit, but that fix was not  
16 proposed until after our lawsuit was filed. So we are likely  
17 to succeed on this inconsistency and vagueness in this  
18 provision.

19           **THE COURT:** For Mr. Stein.

20           **MS. BOYCE:** The Attorney General agrees with that  
21 assessment, Your Honor, and the only thing I would add, I do  
22 think it is notable that neither in the intervenors' brief nor  
23 today do they seem to be disputing the idea that these statutes  
24 do currently pose a due process problem.

25           I think my colleague, Mr. Boyle, said these do need

1 to be changed, implying there is a constitutional problem here,  
2 so I think that speaks to the earlier question we were  
3 discussing about the need for injunctive relief in the event  
4 that July 1st arrives and we do not yet have any action from  
5 the Governor one way or the other.

6 I do think it is important to emphasize that there  
7 does seem to be unanimous agreement here that there is a  
8 constitutional problem necessitating relief from this Court.

9 **THE COURT:** All right.

10 For the licensing defendants?

11 **MR. BULLERI:** We do not wish to be heard on this  
12 point, Your Honor.

13 **THE COURT:** And the secretary?

14 **MR. WOOD:** We are not taking a position on this  
15 either, Your Honor.

16 **THE COURT:** Mr. Williams?

17 **MR. WILLIAMS:** No need to be heard, Your Honor.

18 **THE COURT:** Mr. Boyle.

19 **MR. BOYLE:** Thank you, Your Honor. We do not think  
20 that this was an improperly included provision because I'm no  
21 doctor, but I've been told, and I think I can represent to the  
22 Court that my understanding is that the FDA says that Mifeprex  
23 and Mifepristone, the abortion drugs, are approved up to ten  
24 weeks, which would be 70 days. So there is a rational basis  
25 for including that in the Bill as it was included.

1           However, I think what you have unanimity on here  
2 today is that if the Bill, the T&C Bill is enacted into law, it  
3 moots that argument, so I don't know that we need to be heard  
4 on it further because, again, our position is that the Bill  
5 will obviate the need for further discussion, but if there is  
6 an actual substantive decision made on that, then we would be  
7 able to provide facts that support the rational basis for our  
8 inclusion of the original language in the Act, Your Honor.

9           **THE COURT:** All right. Turning to -- let's see,  
10 let's just talk about the 72 hour and pregnancy location  
11 reporting things.

12           Can we talk about those together?

13           **MS. AMIRI:** Yes, Your Honor. All of the problems  
14 caused by 83C.

15           **THE COURT:** 83C problems.

16           **MS. AMIRI:** Yes. So they are legion with that  
17 section, including creating a new 72 hour waiting period  
18 requirement that does not cross-reference any medical emergency  
19 exception. So it is vague as to whether a provider could  
20 forego the 72 hour waiting period in the context of an  
21 emergency, which obviously then would lead into our other  
22 claims involving concern for bodily integrity. But certainly  
23 on our TRO we've moved on a vagueness claim here because of the  
24 lack of a health exception, emergency exception in this section  
25 where it is present in other provisions in the law that has

1 existed for years, but no cross-reference here.

2           There is also the other problem with 83C that has the  
3 impossibility of compliance that we have raised in terms of  
4 providing insurance information about whether the procedure to  
5 be performed is covered. That is not possible to do in all  
6 circumstances, given that the insurance companies often make  
7 determinations about coverage after the fact and --

8           **THE COURT:** I mean, probably everybody in the room  
9 has some experience with insurance coverage, maybe, or almost  
10 everybody, but you did have some allegations in your complaint  
11 about this and your complaint was verified because I did not  
12 see it in the affidavit that you filed, but it was in the  
13 verified complaint, right?

14           **MS. AMIRI:** Yes, Your Honor.

15           **THE COURT:** Go ahead.

16           **MS. AMIRI:** Verified by both Planned Parenthood and  
17 as well as Dr. Gray. So in their experience, and as you say  
18 for those of us on the patient side of things, we often know  
19 that sometimes the insurance companies deny a claim after the  
20 procedure happens and so it is not possible to say with a  
21 hundred percent certainty that the insurance will cover the  
22 procedure 72 hours in advance.

23           The amendments obviously address this as well, but as  
24 the law was written originally, there was an impossibility of  
25 compliance there.

1           There was also another issue which now has escaped my  
2 brain -- the restarting of the clock.

3           **THE COURT:** Oh, yes.

4           **MS. AMIRI:** The other issue with this is in other  
5 sections of the informed consent law is, that if certain  
6 information is not available, then the -- like the physician's  
7 name, then the 72 hour waiting period doesn't restart and that  
8 is not clear from .83C, and so what that would mean for  
9 patients is, that if a doctor changes, and again, this is in  
10 the verified complaint, as you can imagine with busy schedules,  
11 both on the patients' side and on the providers' side, the  
12 provider who intends to provide the abortion, that person's  
13 schedule may change or the patient may have to reschedule,  
14 which is why the informed consent provisions that have existed  
15 for years, allow for that change and not restarting the 72 hour  
16 clock, but .83C does not allow, on its face, for the restarting  
17 of the clock.

18           **THE COURT:** Well, I would be less concerned -- I  
19 mean, they can change it if they want to, arguably. *Dobbs*  
20 gives legislature a lot of authority. My concern was more that  
21 it is inconsistent or at least appears to be inconsistent with  
22 what is in the other two provisions that seemed like a stronger  
23 argument.

24           **MS. AMIRI:** Yes, Your Honor. That's exactly what I  
25 am saying. Inconsistency and vagueness as to what has to be

1 followed, because as you are noticing, there is a lot of  
2 duplication in .83C as well as in the other informed consent  
3 provisions in .83C, you have to provide the physician's name 72  
4 hours in advance. There is no mention of restarting the clock  
5 if the physician's name changes, but in the informed consent  
6 provision there is, so you have the inconsistency and the  
7 vagueness as to what needs to be followed by the providers.

8           As to *Dobbs*, Your Honor, we're not making any  
9 arguments about the fundamental right to access abortion under  
10 the constitution, but *Dobbs* does not change other  
11 constitutional restraints on the Government to not pass vague  
12 laws, to not pass laws that are impossible to comply with, and  
13 those are what our claims are about. They are not about both  
14 the right to privacy and the other claims, the other  
15 constitutional claims that we have brought are not changed by  
16 *Dobbs*.

17           **THE COURT:** All right. Thank you.  
18           For Mr. Stein.

19           **MS. BOYCE:** Yes, Your Honor, we agree with the  
20 assessment that the law imposes contradictory rules, or at  
21 least has a vagueness problem with respect to the medical  
22 emergency exception.

23           The Attorney General has not taken a position with  
24 respect to things like insurance, given the lack of any  
25 evidence that has been put forward on that thus far, and



1 despite his experiential familiarity with insurance, just like  
2 Your Honor's, he didn't take a position with respect to how  
3 quickly insurance can be obtained or verified, so no position  
4 on that particular aspect of this issue.

5 **THE COURT:** Okay. Let me just go to Mr. Boyle first  
6 and get you to address that.

7 **MR. BOYLE:** Yes, Your Honor. We don't necessarily  
8 agree that it was vague or that the clock is restarted as  
9 originally written, but again, this all collapses when the Bill  
10 becomes a law, the T&C Bill becomes a law and removes this  
11 section completely.

12 I think, you know, the fact that DHHS is presumably  
13 making all of these forms it has been since maybe May 4th or at  
14 least May 17th, also goes to the underlying need for the  
15 immediate action here.

16 Again, I think that just highlights that aspect of  
17 why it does not need to be a TRO, but this mootness argument,  
18 this will be moot once the Bill becomes law.

19 **THE COURT:** All right. Do any of the other  
20 defendants who are present here want to be heard? Stand up if  
21 you do and say so. Okay.

22 All right. That takes us to the reporting  
23 requirement, the three day requirement. You actually already  
24 said some things about this one, but go ahead.

25 **MS. AMIRI:** Yes, Your Honor. Thank you. This is

1 another section where it is compelling the impossible, which  
2 is, "Filing a completed report to the Department of Health and  
3 Human Services, and also the Division of Social Services, three  
4 days after a minor's abortion, that includes information about  
5 whether they returned for a follow-up visit that must be  
6 scheduled seven to 14-days after the medication abortion."

7           So there is no way for providers to file a completed  
8 report three days after a medication abortion for a minor,  
9 where she must be scheduled for a follow-up visit seven to 14  
10 days after the abortion.

11           **THE COURT:** To state the obvious, seven days hasn't  
12 happened.

13           **MS. AMIRI:** Exactly, Your Honor. There is no way to  
14 file a completed report. Also, there is information about how  
15 much money was --

16           **THE COURT:** Say again, how much money --

17           **MS. AMIRI:** Was billed to cover treatment for  
18 complications. And not all complications might arise in three  
19 days. So, Your Honor, we think that for both of those reasons  
20 the reporting requirement for minors and that three day time  
21 period to submit a completed report is an attempt to compel the  
22 impossible, which is prohibited under the due process clause.

23           **THE COURT:** Hold on just one second.

24           Was there anything else?

25           **MS. BOYCE:** The Attorney General hasn't taken a

1 position on this particular provision except to say that it  
2 does seem that the plaintiffs have pointed out a conflict  
3 particularly with respect to the three days versus seven to 14  
4 day follow-up visit timeline.

5 **THE COURT:** Mr. Boyle.

6 **MR. BOYLE:** Sort of the same argument, Your Honor.  
7 We intend to fix -- make it 30 days. I think that obviates the  
8 need for further discussion once that becomes law.

9 **THE COURT:** Any of the other defendants want to be  
10 heard?

11 **MR. WOOD:** No, Your Honor.

12 **THE COURT:** All right. I think that takes us, if I  
13 have not missed anything -- I have missed something. We may --  
14 I forgot to cover the intrauterine location provision.

15 **MR. IM:** That's correct, Your Honor, just to be clear  
16 for the intrauterine location of the pregnancy provision, that  
17 is a provision that would not be mooted by the amendments  
18 released. That's our position.

19 **THE COURT:** Can you talk to me about that?

20 **MR. IM:** It might be helpful to take a step back and  
21 look a little bit at the medicine just to be precise about what  
22 we're talking about. Some patients at the clinic present very  
23 early in their pregnancy and so at that point they have a  
24 positive pregnancy test but there is not yet a gestational sack  
25 that is visible in the ultrasound, so when that happens --

1           **THE COURT:** This is all in Dr. Gray's affidavit or  
2 declaration, I think.

3           **MR. IM:** It is in Dr. Farris's declaration. So in  
4 these kinds of cases, Planned Parenthood South Atlantic  
5 provides care that is in line with best practices, that is in  
6 line with evidence-based medicine, and so essentially what they  
7 do is, they screen, so they do screenings to insure that the  
8 patient is still pregnant, that there is not an ectopic  
9 pregnancy, and that the patient hasn't had a miscarriage. And  
10 then once they do that, they essentially sit down with the  
11 patient and offer three options; so there is medication  
12 abortion, aspiration abortion, or essentially waiting and  
13 seeing, and then together, the provider and the patient decide  
14 which option is best.

15           So what the Act would do, and what we're talking  
16 about here is this third option of medication abortion, and  
17 whether that will continue to be available.

18           So I'll start with our vagueness challenge. The Act  
19 in general of course says that it is not unlawful to provide  
20 abortions through twelve weeks of gestation age, but has  
21 enacted -- right now the Act requires that the physician,  
22 "document in the woman's medical chart the intrauterine  
23 location of the pregnancy." So it doesn't say that when the  
24 provider can't verify the intrauterine location of the  
25 pregnancy, essentially when it is one of these pregnancies of

1 unknown location, is the term of art, so for a pregnancy of  
2 unknown location, it doesn't explicitly ban medication  
3 abortion, but it kind of suggests that the doctor might have to  
4 document the intrauterine location of the pregnancy.

5 **THE COURT:** Well, it requires you to document it.

6 **MR. IM:** Right.

7 **THE COURT:** It doesn't suggest that you do it, it  
8 requires that you do it. I say you, I don't mean you, but one.

9 **MR. IM:** It requires that you document the  
10 intrauterine location of the pregnancy.

11 **THE COURT:** Your argument is if you can't document  
12 it, that implies that you can't do it?

13 **MR. IM:** Right. As amended, the Act will read that  
14 the physician is required to document the existence of an  
15 intrauterine location pregnancy, which again, I think has that  
16 same issue. It is not completely clear whether it is banned,  
17 because I think --

18 **THE COURT:** Doesn't that just mean it is not ectopic?  
19 I mean, isn't that what it means?

20 **MR. IM:** That is what it means.

21 **THE COURT:** You didn't tell me that you check for  
22 that, not you personally.

23 **MR. IM:** Right. I think the problem is when you  
24 can't actually see the gestational sack on ultrasound. I don't  
25 know if the doctor can check off they can screen for ectopic,

1 but they can't check off on a form that it is for sure  
2 intrauterine.

3 I believe there is a bit of a factual issue there  
4 but, ultimately this is evidence-based care that Planned  
5 Parenthood South Atlantic provides, and to the extent that the  
6 Act is unclear about whether medication abortion is permitted  
7 for pregnancies of unknown location, our argument is that it is  
8 vague, and to the extent it actually prohibits providing  
9 medication abortion for patients who have a pregnancy of  
10 unknown location, our argument is that it doesn't satisfy  
11 rational basis scrutiny, and as it stands right now, and I know  
12 this is an early stage in the litigation, the State and the  
13 intervenors haven't presented any evidence on that part, so the  
14 un rebutted evidence in the record is that medication abortion  
15 can safely and effectively be provided to patients with  
16 pregnancy of unknown location, and for that reason, I -- and  
17 there is, you know, no legitimate State interest that is served  
18 by prohibiting medication abortion under the circumstances.

19 **THE COURT:** So on this one you have two arguments and  
20 you are making both of them at this stage. One, it is vague.  
21 Two, if it prohibits them, then it is -- there is no rational  
22 basis.

23 **MR. IM:** That's right, Your Honor. We're making  
24 those regardless of whether the amendment passes, so our  
25 argument is the amendments don't take care of either of those

1 issues.

2 **THE COURT:** For the Attorney General.

3 **MS. BOYCE:** Yes, Your Honor. My understanding of  
4 this argument is essentially that it is analogous to the 70 day  
5 versus twelve week issue, where the law in one place seems to  
6 clearly say medication abortion is lawful up to twelve weeks,  
7 but then has a provision that would seem to suggest after ten  
8 weeks it is not okay.

9 Here, too, it sounds like the law says medication  
10 abortion is okay up to twelve weeks, but then in another  
11 provision it seems to suggest that if the pregnancy is too  
12 early for these things to be seen on an ultrasound, perhaps it  
13 isn't actually lawful after all, and the Attorney General has  
14 not taken a firm view as to the conflict, given his lack of  
15 experience with this technology and his medical expertise, but  
16 certainly as presented, that would seem to present a conflict  
17 that makes it quite difficult for law enforcement officers to  
18 know whether they could -- whether an abortion was lawful or  
19 not.

20 **THE COURT:** And no position on the rational basis  
21 argument?

22 **MS. BOYCE:** No, Your Honor.

23 **THE COURT:** Mr. Boyle.

24 **MR. BOYLE:** Thank you, Your Honor. I'm looking at  
25 Dr. Farris's declaration, which is docket entry 26-1, and I

1 believe I heard plaintiffs' counsel say that Dr. Farris said in  
2 her declaration that they test to screen for ectopic  
3 pregnancies before they perform a medical abortion --  
4 medication abortion. I'm not trying to be obtuse, but I can't  
5 find it in here, and I'm happy to yield my time back to  
6 plaintiffs' counsel if it's in here, but I wasn't able to find  
7 it.

8 I think it is an important admission, though, Your  
9 Honor, even if it is not from the doctor, and I could be wrong,  
10 so I'm not suggesting it is not in there, I just couldn't find  
11 it.

12 It is an important admission, because this is not a  
13 confusion. There wasn't some accidental, we included 70 days  
14 when we said twelve weeks. You know, that wasn't an accident,  
15 either, but this is an important medical health and safety  
16 thing, component, rather, of this law, Your Honor, because we  
17 believe that we will be able to present medical evidence.

18 I'm no doctor, I'm not giving evidence, but we  
19 believe that we'll be able to present medical evidence that  
20 supports the law as written, and suggests very strongly, that  
21 it is not safe or it could be more risky to give a patient  
22 Mifepristone, I'm saying that wrong, but Mifeprex and the other  
23 abortion drugs if there is an ectopic pregnancy. The patient  
24 needs to know, and I think I heard plaintiffs' lawyer say that  
25 they actually do screen for this and make sure that it is not



1 an ectopic pregnancy, and I think Your Honor hit the nail on  
2 the head when you asked, isn't this just saying you are making  
3 sure it's not an ectopic pregnancy. That's not a mistake in  
4 the law, Your Honor. We clarified what it was specifically.

5           We meant -- we don't need to know the exact location,  
6 you just need to know that it is intrauterine, not ectopic, and  
7 I believe that the medicine will support that.

8           To the extent plaintiffs say, no, you don't need to  
9 know that, the defendants, the legislature and the intervenors  
10 say you do need to know that. That's a rational basis,  
11 argument, Your Honor. It is not vague to determine whether it  
12 is intrauterine or not. That's not vague. It is not  
13 irrational. Again, it is quite rational, based on the evidence  
14 that we intend to present and provide to the Court.

15           **THE COURT:** So under the current law, and I guess  
16 even as amended -- well, let me just ask it separately, two  
17 different questions.

18           Under the current law, is it the intervenors'  
19 position that if the provider cannot locate -- you know, cannot  
20 provide an intrauterine location, then the abortion would be  
21 unlawful, the medical abortion would be unlawful? Is that your  
22 position? So it is not vague because it is clear that it would  
23 be unlawful?

24           **MR. BOYLE:** It would be not allowed under the laws of  
25 North Carolina. That doesn't mean it is criminal. To my

1 understanding, there isn't a criminal provision attached to  
2 that, but it would be unlawful, like, pick another medical  
3 risky --

4 **THE COURT:** So a doctor could have his license  
5 suspended if he prescribed the medicine without being able to  
6 determine that there was an intrauterine location?

7 **MR. BOYLE:** I think that's correct, Your Honor. I  
8 believe that's correct.

9 **THE COURT:** Okay. And the second part of that is --  
10 so, first of all, it is not vague. It is clear that you can't  
11 do it, whether it is unlawful or just not allowed, and there is  
12 a rational basis for that, and I know we're very early and we  
13 don't have a lot, hardly any evidence from anybody really on  
14 this point, but that's going to be your position, that there is  
15 a rational basis?

16 **MR. BOYLE:** Don't take my word for it. It is either  
17 in 26-1, the declaration, or the plaintiffs have made that  
18 representation to the Court, and I don't disagree with them,  
19 you do need to know if it is an ectopic pregnancy before you  
20 get those drugs or not. That's very rational and it is quite  
21 related to health and safety for the mother, the patient.

22 **THE COURT:** Okay. Thank you.

23 Any other defendants want to be heard, and by that I  
24 mean, state a position? Everybody is saying no.

25 Plaintiff have anything to say in response?

1           **MR. IM:** Your Honor, just briefly. So first of all,  
2 as to Dr. Farris's declaration, I'm looking at the declaration,  
3 and I do apologize if I went into a little more detail than is  
4 included, but paragraph 41 does state the PP --

5           **THE COURT:** Slow down.

6           **MR. IM:** Absolutely. The declaration does state,  
7 "The PPSAT follows an established protocol for safely  
8 administering medication abortion in early pregnancies before  
9 the location of the pregnancy can be visualized and  
10 determined."

11           Your Honor --

12           **THE COURT:** But it doesn't say anything about  
13 screening for ectopic pregnancies, right?

14           **MR. IM:** It doesn't say anything specific about that.  
15 I have two brief points about the arguments.

16           First, on the vagueness argument, I think the fact  
17 that counsel for the legislature has said that it is clear that  
18 it is unlawful, I've also looked at the statute many times. I  
19 don't think it is clear that it says that providing medication  
20 abortion for a patient who has pregnancy of unknown location is  
21 unlawful, so I think that kind of hits the nail on the head for  
22 the vagueness argument, and to the extent that it says that it  
23 is unlawful, that's in direct contradiction as counsel for AG  
24 Stein pointed out with the provision that medication abortion  
25 before twelve weeks is not unlawful.

1           Then as to the rational basis issue, I certainly  
2 appreciate that counsel for the intervenors will present  
3 evidence in the future, certainly at the PI stage about this,  
4 but as it stands right now, the only evidence in the record is  
5 from Dr. Farris, and Dr. Farris also cites medical studies  
6 about -- or a medical study, excuse me, about the safety and  
7 efficacy of providing medication abortion in cases of  
8 pregnancies of unknown location, and so right now as the  
9 evidence is in the record, our position would be that  
10 plaintiffs have carried their burden that this can be safely  
11 and effectively provided and, therefore, that there is no  
12 rational basis for the provision.

13           **THE COURT:** Thank you.

14           **MR. BOYLE:** Very briefly, Your Honor. I haven't read  
15 footnote 29 --

16           **THE COURT:** Speak up.

17           **MR. BOYLE:** I have not read footnote 29, the article  
18 that is cited by Dr. Farris, Professor Cronin, for undesired  
19 pregnancy of unknown location, and I don't know if it says that  
20 you have to screen for ectopic pregnancies. I do know that it  
21 sounds like they do screen for ectopic pregnancies, so if it's  
22 codified into law that you screen for that, I don't see how it  
23 is any problem for them whatsoever.

24           And to the extent that they were screening for  
25 ectopic pregnancies but not at the same time verifying they

1 were located intrauterine, this is probably a bonus, not a bug  
2 to this new law, Your Honor.

3           **THE COURT:** All right. Well, we will have to work  
4 through the details of that later. I appreciate you all going  
5 through that with me.

6           I think that the advised, procure, cause provision,  
7 it is five minutes to 11, so because that might take more than  
8 five minutes, and I'm pretty religious about taking regular  
9 breaks, I propose that we take a 15 minute break. Let  
10 everybody stretch their legs. People can call and see if the  
11 Governor signed something. You know, tell me something I don't  
12 know.

13           Then we'll come back and what I show left is the one  
14 I just mentioned, advise, procure, cause, and then what is next  
15 and how do we deal with all of, you know, between now and  
16 Saturday, that situation, and then how do we deal with the  
17 timing after that, and we'll just talk about that. Mostly  
18 about scheduling, you know, and the logistics and that kind of  
19 thing.

20           So if counsel have not really talked about that, you  
21 all might take at least a few minutes during the break to talk  
22 among yourselves, and then we'll -- you know, I'm not asking  
23 you to -- well, I'm certainly not demanding that you agree on  
24 scheduling issues, but it would be helpful if you all at least  
25 kind of think about it together before we come back and talk

1 about it.

2 So that's where we are. We'll take a 15 minute  
3 recess.

4 (Recess taken from 10:55 to 11:15 a.m.)

5 **THE COURT:** I'm sorry I took a little longer than 15  
6 minutes.

7 Let's turn to the advise, procure, consent section --  
8 hold on. Let me get my notes about that in front of me. All  
9 right. Go ahead for the plaintiff.

10 **MS. AMIRI:** Thank you, Your Honor. So as written  
11 originally, our argument is that the provision that makes it  
12 unlawful after the twelfth week of a woman's pregnancy to  
13 advise, procure, or cause a miscarriage or abortion is vague as  
14 to whether it breaches First Amendment protected activity,  
15 specifically about providing assistance to others to obtain  
16 abortions out of state where abortion is lawful.

17 Given vagueness, it is susceptible to two readings,  
18 and the Court could adopt a binding instruction, avoiding the  
19 constitutional issue, which if read that it would prohibit that  
20 First Amendment protected activity, would violate the First  
21 Amendment, and I don't think that there is any dispute on the  
22 fact that the First Amendment protects providing information,  
23 for example, about how to obtain an abortion out of state, that  
24 that is protected lawful activity under the First Amendment,  
25 but certainly we can go into that if there is such a dispute.

1           **THE COURT:** I guess this could fall by the wayside,  
2 because it is an abortion case, what is it, 1975, that was an  
3 advertising case.

4           **MS. AMIRI:** Yes, Your Honor, it was *Bigelow versus*  
5 *Virginia*, yes, Your Honor, and it was about advertising  
6 abortion in Virginia where abortion at the time was unlawful in  
7 Virginia but legal in New York, but it was an advertisement  
8 saying you could obtain abortion in New York, and the Supreme  
9 Court said advertisements were protected speech.

10          **THE COURT:** That was strictly a First Amendment case.

11          **MS. AMIRI:** Correct. Yes, your Honor. I don't know  
12 that there is anyone on the other side disputing that the First  
13 Amendment protects providing such information or assistance to  
14 people to obtain abortions in a state where abortion is lawful.  
15 If there is, we're happy to dig into the case law a little bit  
16 more.

17               I think the primary consideration for the Court, Your  
18 Honor, is on the initial read as written in the original Bill,  
19 the provision is vague, and it could breach protected First  
20 Amendment activity, and so we would offer that there could be a  
21 temporary restraining order on limits, basically adopting a  
22 binding instruction that it does not reach --

23          **THE COURT:** Slow down.

24          **MS. AMIRI:** That it does not reach protected First  
25 Amendment activity such as providing assistance to people who

1 are seeking abortions out of the state where abortion is  
2 lawful, after the twelfth week of pregnancy.

3 **THE COURT:** And if the amendment passes -- or let  
4 me -- it already has passed, it just hasn't gone into effect,  
5 it takes out advise, leaves in procure or cause and it adds the  
6 North Carolina language. So let me hear from you about that.

7 **MS. AMIRI:** Yes, Your Honor. As to the amendments, I  
8 think that there remains concern that the Attorney General has  
9 raised in terms of whether that word "cause" could be  
10 interpreted as reaching First Amendment conduct to access  
11 abortions out of state where abortion is lawful. So I think to  
12 the extent a concern is lingering, I think that there is an  
13 opportunity for construction as well to prevent what I think  
14 all of the parties agree would be protected under the First  
15 Amendment, which is providing assistance to people to obtain  
16 lawful abortions out of state.

17 **THE COURT:** Okay. Thank you.

18 **MS. AMIRI:** Your Honor, I think the heightened  
19 concern there is, this is a provision that has criminal  
20 penalties, so there aren't many in the law that do, but this  
21 provision of the law does have criminal penalties.

22 **THE COURT:** Thank you for pointing that out, since I  
23 think I specifically asked about that and we haven't always  
24 covered it. But thank you.

25 Okay. For the Attorney General, Mr. Stein.



1           **MS. BOYCE:** Yes, Your Honor. So we agree with the  
2 plaintiffs' assessment of the law as originally drafted. I'll  
3 focus just briefly on the cause for concern with respect to the  
4 amendments, should those become law.

5           So I don't want to make a mountain out of a molehill  
6 on this, and to the extent the parties do all agree as to the  
7 appropriate interpretation of the law, then perhaps a  
8 stipulation might be the best way to approach this as well, but  
9 given the criminal penalties that the plaintiffs have  
10 referenced, the Attorney General does strongly believe that it  
11 needs to be clear exactly what is and is not criminalized under  
12 this provision, and we do have the concern that even if the  
13 amendments become law and the law is revised, there remains  
14 ambiguity as to what exactly is lawful and what is not, and  
15 that is both with respect to the cause language which would  
16 seem to sweep in certainly First Amendment speech, but perhaps  
17 also other indirect means of bringing about an abortion, and  
18 also a concern about the geographic limitation.

19           We agree that perhaps the most straightforward way to  
20 read that language is that it only applies to the location of  
21 the abortion, but we don't think that is the only way to read  
22 it. It could also be read to reference the entire conduct  
23 described in the provision, and to avoid any ambiguity there  
24 and make sure every one is on clear notice as to what is and  
25 what is not criminal in North Carolina, we would urge the Court

1 to either enter declaratory relief clarifying the scope of the  
2 law or enter an injunction barring enforcement of the law in  
3 circumstances that would relate to abortion out of state.

4 **THE COURT:** Thank you.

5 For the intervenors.

6 **MR. BOYLE:** Thank you, Your Honor. First, it is my  
7 understanding that this particular part of the law was  
8 originally passed in 1973. This clause that included unlawful  
9 to advise, procure, or cause miscarriage or abortion in the  
10 following circumstances, and the new part that is added in the  
11 Act are the specific exceptions one through four and some of  
12 those may be somewhat carried over from the old versions with  
13 some modifications like twelve weeks, as you can see.

14 Your Honor, I've got a copy of the Act. I don't know  
15 if you've got one.

16 **THE COURT:** I've got it right here, but it is like 48  
17 pages long, so if you can tell me --

18 **MR. BOYLE:** Let me direct you, if I can. It is on  
19 page four of mine, but I don't know if that's how it is in  
20 your's, Your Honor. Section 90-21.81B, so 90-21.81B, when  
21 abortion is lawful.

22 **THE COURT:** Hold on.

23 **MR. BOYLE:** I'd be happy to give you a copy of it.

24 **THE COURT:** It is just these numbers make it almost  
25 impossible to speak in plain English. Everybody is nodding

1 yes, I want the record to reflect.

2 So at the bottom, I'm looking at the copy attached to  
3 the complaint, all right. So 90-21.81B, when abortion is  
4 lawful and then where is it in the --

5 **MR. BOYLE:** So you got that first paragraph right  
6 underneath there and that has the unlawful to advise, procure,  
7 cause and doesn't have the North Carolina phrase of this law,  
8 the Act that's been passed, the Act that was veto override  
9 May 17th, Your Honor. And then will you cross-reference that  
10 to the T&C Bill --

11 **THE COURT:** Wait a second.

12 **MR. BOYLE:** I'm sorry, I forgot to make that point.  
13 That passage right there, I believe has been in North Carolina  
14 law since 1973.

15 **THE COURT:** Where it says, "it shall not be  
16 unlawful," the language you just directed me to,  
17 notwithstanding the provisions of, it shall not be unlawful?  
18 Is that what you are directing me to?

19 **MR. BOYLE:** Yes, Your Honor. Which when you  
20 cross-reference that to the T&C Bill Section 14.1(c), that that  
21 is what we're talking about, where they take out the word  
22 "advise," and have the words State of North Carolina.

23 **THE COURT:** Wait a second. I think I've made myself  
24 confused, hold on.

25 **MR. BOYLE:** Again, Your Honor, I don't mean to --

1           **THE COURT:** That's okay, just stop talking for a  
2 second. I thought we were talking about -- I thought we were  
3 talking about 90-21.81A(a) right above that, where it says, "It  
4 shall be unlawful after the twelfth week to advise, procure, or  
5 cause." Now I appreciate which I had not noticed, that the  
6 advised, procure, or cause language is in 81B, but I thought  
7 the part that was at issue was 81A(a). Right? I'm looking at  
8 the plaintiff.

9           **MS. AMIRI:** Yes, Your Honor. I believe that is  
10 correct, although the amendment addresses both sections.

11           **THE COURT:** All right. Okay. So I've -- I think I  
12 have caught up. Now start over again, please, Mr. Boyle.

13           **MR. BOYLE:** Thank you, Your Honor. I think my  
14 understanding is that that part that includes "the advise," and  
15 did not include the "in North Carolina," has been in the law  
16 since 1973.

17           So to the extent that we've recently discovered a new  
18 way to interpret that, I don't know that that's accurate and  
19 again, if the T&C --

20           **THE COURT:** I'm not following you. I'm looking at  
21 the -- again, the attachment to the complaint, and I thought  
22 the underlined language was new. Now, I don't know where  
23 this --

24           **MR. BOYLE:** I had it wrong, I'm sorry, Your Honor,  
25 you are correct. It is in both, actually. It is B and C. I

1 was only talking about C, but it is B and C, and it includes  
2 81A and 81B, Your Honor, I apologize.

3           **THE COURT:** That's okay. It is a miracle we haven't  
4 had more confusion today. Okay. So what I think we're talking  
5 about here is primarily today, at least, A. "It shall be  
6 unlawful to advise, procure, or cause a miscarriage or  
7 abortion." And are you saying that has been in the statute for  
8 years, except for the twelfth week part?

9           **MR. BOYLE:** That's my understanding, yes, Your Honor.  
10 I believe that's just a recodification of the prior law,  
11 updating it to the twelve weeks as opposed to --

12           **THE COURT:** The 20 weeks?

13           **MR. BOYLE:** Yes, Your Honor. I have not done the  
14 research on that myself. That's what I've been told, and I  
15 think that's accurate, and so I only bring that up, Your Honor,  
16 to suggest that this isn't really a problem with the First  
17 Amendment violations and people being prosecuted. It is not  
18 like there is some emergency that occurred on May 17th when the  
19 Act passed.

20           **THE COURT:** It is a different world than it was a  
21 year ago. Right? Isn't that your position on this issue on  
22 abortion, it is a different world?

23           **MR. BOYLE:** *Dobbs* certainly changed the aspect of it,  
24 but admittedly following *Dobbs* for 11 months, the prior law was  
25 on the books, Your Honor, and nobody was going out and

1 prosecuting people for giving women in North Carolina advice  
2 about how to get abortions outside North Carolina beyond the 20  
3 weeks. I'm not saying that that inchoate issue wasn't there,  
4 and again, when you look at the T&C Bill.

5           **THE COURT:** Plus, the Fourth Circuit told me fairly  
6 recently in the *Grimmett* case, that the fact that something,  
7 you know, has never been enforced in an unconstitutional way,  
8 doesn't mean that the statute is constitutional. I heard them.  
9 That's what they told, me and everybody else, just a few months  
10 ago.

11           **MR. BOYLE:** I almost cited that case and then I read  
12 it and decided not to.

13           **THE COURT:** I don't mind being told I'm wrong on the  
14 rare occasions that it happens.

15           **MR. BOYLE:** But the T&C Bill takes out any confusion  
16 about the advise, and it adds the geographic location in North  
17 Carolina, and my esteemed colleague is very smart and has read  
18 this, I believe in a way that you might in a law school setting  
19 or in a lawyer's office setting. I don't think Your Honor's  
20 recitation of what vagueness to the average person interpreting  
21 the statute, I don't think that's a problem with the way it  
22 will be rewritten if the Bill becomes enacted. And, I mean, it  
23 is fairly straightforward from my reading of it, Your Honor,  
24 for whatever that's worth, that you can't help someone get an  
25 actual abortion in North Carolina under the new changed wording

1 of the T&C Bill, but it would not preclude anyone from -- I  
2 would say, driving a car, driving a person across state lines  
3 to another state where it might be legal after twelve weeks. I  
4 don't think that's a fair reading of it.

5 **THE COURT:** It wouldn't even, under the procure, if  
6 you were in North Carolina and you called somebody in some  
7 other state where it is legal and made the appointment, that  
8 wouldn't be procuring it in a way that violated this, the  
9 amended statute?

10 **MR. BOYLE:** I think the abortion in North Carolina  
11 would be the problem, and if it's an abortion somewhere else,  
12 it would not.

13 **THE COURT:** Lawful abortion somewhere else.

14 **MR. BOYLE:** If there is a lawful abortion somewhere  
15 else, Your Honor, I don't think there is a fair reading of this  
16 after the changes that would implicate that person.

17 **THE COURT:** All right. Thank you.

18 **MR. BOYLE:** Thank you, Your Honor.

19 **THE COURT:** Any of the other defendants want to be  
20 heard? No.

21 What else does the plaintiff have to say about this?

22 **MS. AMIRI:** Your Honor, I think we don't necessarily  
23 need to get into the history, but for point of reference, the  
24 statute that I believe opposing counsel is referring to is  
25 14-44, which is actually referenced in the S.B. 20, and it does

1 talk about advise and procure. It does not use the word cause.

2 But I think you're right, Your Honor, that we are in  
3 a different world now where there is heightened concern about  
4 the use of statutes to go after abortion providers and we are  
5 currently litigating --

6 **THE COURT:** Not just abortion providers, moms of  
7 teenagers.

8 **MS. AMIRI:** Correct. People helping other people  
9 access abortions.

10 **THE COURT:** I mean, you read about that in other  
11 states.

12 **MS. AMIRI:** And to that point, Your Honor, we have a  
13 case pending in Idaho, after the Idaho Attorney General said  
14 that medical providers could lose their license and possibly  
15 face criminal penalties for referring people to abortions out  
16 of State in Idaho, to places -- states where abortion is legal.

17 So there is a heightened concern for every one who  
18 helps people access abortion out of state, so we've, given the  
19 criminal penalties, there is in increased concern about the  
20 arbitrary enforcement, a fair notice, everything that is in the  
21 vagueness doctrine that Your Honor is familiar with, and where  
22 there is two readings and one of them is a constitutional  
23 reading, it seems that I think I heard notice agreement that  
24 there could be a construction here that would avoid the  
25 constitutional problems.



1           **THE COURT:** Okay. Anything else for the Attorney  
2 General?

3           **MS. BOYCE:** No, nothing further, Your Honor.

4           **THE COURT:** I think I might have overlooked a  
5 possibility, which is, the Governor signs the Bill Sunday or  
6 Monday and then we have -- you know, I mean, I've done whatever  
7 I've done. Okay. I don't know.

8           So what I want to talk about now -- well, let me  
9 think. I've got two other things I want to talk about. Let me  
10 think about the order that I want to do them.

11           **MR. BOYLE:** Your Honor, if I may. Just trying to  
12 think creatively about solutions to the problem. Obviously the  
13 Court has broad discretionary authority, and it would seem to  
14 me that perhaps conditional injunction that might expire upon  
15 passage of amendments for the particular provisions where the  
16 parties have agreed that their claims would be moot, might be a  
17 potential solution to this timing issue where we all agree that  
18 there is certainly a very real possibility that Governor Cooper  
19 has failed to act or at least failed to sign the Bill or veto  
20 it before July 1st when there is urgent need for clarification.  
21 That might be one possible approach to this uncertainty with  
22 respect to timing.

23           **THE COURT:** Well, yes, as to parts. As to parts of  
24 what we've been talking about here today. If it does pass,  
25 then you have new provisions that effect this advice, procure,

1 consent provision, and the intrauterine argument to use very  
2 summary fashioned words, you know, which that is a good idea,  
3 but it doesn't solve the problem as to those provisions.

4 **MS. BOYCE:** \*\*\*\*\* If I may, Your Honor. I think what  
5 I was proposing is perhaps an injunction for certain provisions  
6 would not expire but for other provisions you would make clear  
7 that upon signage or veto of the Bill, then injunctive relief  
8 would terminate.

9 I don't believe aside from the provision that's been  
10 repealed, that the citation of the laws are actually changing  
11 such that it would be a problem for Your Honor to enjoin  
12 specific provisions.

13 **THE COURT:** And leave that even if they are amended,  
14 leave that in effect?

15 **MS. BOYCE:** Yes, Your Honor, for the ones that there  
16 is disagreement. Certainly that would be our position for the  
17 ones there is disagreement about whether the amendments moot  
18 the issue, the injunctive relief would be ongoing.

19 **THE COURT:** I'm not saying I am going to do that.  
20 You are suggesting a way to do that, if that's what I decide to  
21 do?

22 **MS. BOYCE:** Absolutely.

23 **THE COURT:** Plaintiffs' view on that.

24 **MS. AMIRI:** I think it is, unfortunately, more  
25 complicated than that, because the amendments will include

1 changes to provisions of the law that we didn't initially  
2 challenge because they were not at issue at the time we filed  
3 our complaint.

4           So, for example, with .83C being repealed and some of  
5 that information like the insurance information now being  
6 incorporated into 90-21.82 and 90-21.83A, that is a place where  
7 DHHS must promulgate the forms, and I got a citation for you on  
8 the break that the providers are required to use DHHS's forms,  
9 and that's 90-26.83(c). So there will also need to be time to  
10 finish that.

11           So I think that that's also just another complication  
12 as to if we are required to use forms and the forms are not yet  
13 available, and there are provisions that change because of the  
14 amendments that we had not previously challenged, I think  
15 that's -- that he raises some other impossibility of compliance  
16 issues that were obviously unforeseen until just yesterday, I  
17 think.

18           **THE COURT:** All right.

19           **MR. BOYLE:** As to that last point, I don't -- I'm  
20 sympathetic to that position, but until and unless that is  
21 presented to the Court, I don't think it is before the Court  
22 today.

23           **THE COURT:** That is a problem. And so what -- you  
24 know, like what could happen is, the Governor signs it or he  
25 doesn't sign it, but he doesn't veto it and then I guess the

1 plaintiffs need to amend the complaint and immediately file for  
2 TRO, or I don't know what. I mean, that's what you are saying.  
3 Right?

4 **MR. BOYLE:** I hope not, but I'm sure --

5 **THE COURT:** Or not. But if they continue to have  
6 concerns, that would be what they need to do. Is that what you  
7 say?

8 **MR. BOYLE:** That would be appropriate recourse to get  
9 it before the Court properly and let us have a chance to  
10 address it.

11 Actually, I had another point, Your Honor, if I may,  
12 if you're ready.

13 **THE COURT:** I'm ready.

14 **MR. BOYLE:** On the advise and in North Carolina, I  
15 meant to offer this, that we would certainly be willing to look  
16 at a stipulation and see if the parties could come to some  
17 agreement.

18 Again, I appreciate the very intellectual reading of  
19 the revision, if it becomes law, presented by the Mr. Stein,  
20 Attorney General Stein, but I think we can collapse that  
21 problem into a stipulation because we don't -- I don't think we  
22 see it that way.

23 I don't mean to get ahead of myself, but I suspect  
24 this is another one of those problems we can take off the  
25 Court's plate, maybe within the next day or two.

1           **THE COURT:** That would be very nice. Thank you for  
2 that.

3           Ms. Amiri is standing back up.

4           **MS. AMIRI:** Yes, Your Honor. Just in terms of would  
5 we need to amend our complaint, for example, or our TRO. First  
6 of all, we challenge the whole Bill as unconstitutional because  
7 of these inconsistencies and the vagueness and the fetal  
8 homicide piece, which we think would need rewriting of the law  
9 to come into compliance with the constitution, and so we ask  
10 for all relief as just is proper in our complaint and our  
11 preliminary injunction and temporary restraining order motion  
12 asks for the entire Bill to be enjoined. So, you know, if the  
13 request from the Court is to go back and --

14           **THE COURT:** I'm not questioning. I'm asking.

15           **MS. AMIRI:** I think the relief that we have requested  
16 in our complaint and in our current temporary restraining order  
17 would cover any changes.

18           Also, one of the housekeeping matters, you know, that  
19 we could offer the Court is if you would want two different  
20 proposed orders from the plaintiffs, one, a more compliant  
21 order on all of part one, with findings of facts and  
22 conclusions of law and another that goes to part one with  
23 findings of fact and conclusions of law, and another that goes  
24 piecemeal and tries to address all of the issues, including the  
25 amendments that are coming down the pike, like the confusion

1 that I mentioned about the forms needing to encompass these  
2 things, so I offer that as also a possible solution as well.

3 **THE COURT:** Thank you.

4 Well, I'm less concerned about the findings of fact  
5 and conclusions of law as I am about the -- if I were to decide  
6 to issue an injunction, the language of the injunction. That,  
7 to me, is the harder part.

8 So let me just say, at the moment, I don't see any  
9 way that I'm going to enjoin part one in its entirety. That  
10 seems to me to be overbroad relief for the constitutional  
11 problems identified, even if I agree with the plaintiffs and  
12 some of the defendants about those problems. I think that if I  
13 do agree, a narrower injunction is appropriate, so I'm just  
14 going to take that off the table.

15 Now I do think there is some things here that  
16 probably I do have to do something, at least if the Governor  
17 doesn't act, how that should be worded to take care of the  
18 entirety of the situation, you know, I don't exactly know, and  
19 of course the extent of it, there is still a lot of things that  
20 are undecided, you know, particularly the parts that you all  
21 are continuing to disagree about.

22 So what I'm going to give you all is something that I  
23 roughed out before the hearing as to -- and I just went ahead  
24 and put everything in there, not because I'm sure I'm going to  
25 do it, but because I'm trying to plan for every eventuality.

1           It does not have the hospitalization in there because  
2 that just didn't seem like I was going to have to do anything  
3 about that.

4           So I think what I would like you all to do, you can  
5 take -- it says "draft," okay, for any media people here, I  
6 have not decided to do it, and if you say I have, you will not  
7 be accurate, to the extent you care about being accurate. I  
8 assume you do. But, you know, we got to figure out what to  
9 say. And then if anybody wants to submit some alternative  
10 language for the possibility that I decide to grant an  
11 injunction, then I am open to that. Given the timing, you need  
12 to do it by -- today is -- gosh, 4 o'clock tomorrow.

13           **MR. BOYLE:** Any chance we can get a word version of  
14 that? Not necessary, but helpful if possible.

15           **THE COURT:** I don't know. Possibly. I'll worry  
16 about that later on. Yes, I suspect.

17           I mean, I've signed a lot of injunctions in my life  
18 in the last 30 and a half years. But, you know, this is kind  
19 of complicated and it has a lot of numbers in it going back to  
20 our joking around probably inappropriately a little bit earlier  
21 so, you know, I just want to be sure I don't make clerical  
22 errors, too, and it doesn't have any language, like Ms. Boyce  
23 just suggested, to deal with expiring, you know, what if, what  
24 if, what if. I think it has the typical 14-days.

25           Also don't see, if I should grant the injunction, the

1 TRO, I don't see any reason for a bond. That typically is not  
2 done in these kinds of cases. So you will see that in there.

3           So here is what I think we'll do. I'll give that to  
4 you. It is just about two and a half pages long. It kind of  
5 starts in the middle, because I'm not giving you the rest of  
6 it, just the ordering part, and I'm not asking you to tell me  
7 I'm wrong, because I've not decided. I'm talking about the  
8 language. As we say in state court, the form, objections to  
9 the form. I do want it to be clear, you know, that if it is  
10 not clear, that obviously is very important, because Rule 65(d)  
11 requires that.

12           I know I complained earlier about Rule 52 and  
13 findings of fact and conclusions of law, but don't worry about  
14 that part, because I'll take care of that part, whatever I  
15 decide to do; yes or no, I'll take care of that part, and I  
16 don't think I actually need any help, if I decide to deny the  
17 injunction, because that's pretty easy, you just say denied.

18           **MR. BOYLE:** I can give you a draft of that.

19           **THE COURT:** You are welcome to. Pretty much I say,  
20 ordered it is denied, so I don't think I need any real help.  
21 The problem is, what if I decide to do it, either in whole or  
22 in part. So that's why I want -- when you see my draft, it is  
23 broken out because that makes it easier for me, should I decide  
24 to only enjoin some of them, finding likelihood of success, and  
25 we haven't really talked about irreparable injury, balance of



1 the equities and public interest, but the Fourth Circuit has  
2 been extremely clear, including very recently in an en banc  
3 decision which -- Leaders Of A Beautiful Struggle versus  
4 Baltimore Police, 2021, recognizing that if there is a likely  
5 constitutional violation, the other factors generally are  
6 satisfied. So we haven't really talked about those because of  
7 that. So I'll give you that in a second.

8           Then I guess as to what happens next, I don't know.  
9 Any TRO expires within 14-days, right? So we got to have  
10 briefing on a preliminary injunction within 14 -- you know, in  
11 a period that would get the TRO in front of me, you know, and  
12 to the extent the amendments go into effect, you know, we  
13 still -- we would have to address all of that.

14           **MR. BOYLE:** Your Honor, I was going to suggest before  
15 you get to the scheduling, what happens next. You also had  
16 mentioned you wanted to give every one else an opportunity to  
17 say why they didn't want me to be here on behalf of my clients.

18           **THE COURT:** Right. Thank you. I do definitely want  
19 to talk about that, because I hesitated to just grant the  
20 motion in -- without giving anybody a chance to be heard on it,  
21 but in view of that Supreme Court case, I thought -- and what I  
22 understood the Attorney General's position was likely to be, I  
23 thought, okay, let me go ahead and let you be heard. It didn't  
24 really hurt anything and I appreciate your contribution.

25           Going forward, are you going to oppose that.

1           **MS. AMIRI:** We do not oppose intervention. We would  
2 like to reserve any sort of future objections if there are  
3 duplications of efforts, lengthy briefs, so sometimes courts  
4 have put limits on intervenors so there isn't duplication of  
5 parties, so we would like to reserve that for a later date if  
6 that were to arise.

7           **THE COURT:** That is absolutely true, and I agree with  
8 that concept, because I don't like, particularly when people  
9 start asking me for extensions of the word limit and then I get  
10 a bunch of repetitive stuff in five different briefs from the  
11 defendants and am attempted to not read any of it. I always  
12 read it but, you know, it is very much a problem when I end up  
13 having to deal with repetitive, because it is confusing, so we  
14 would have to deal with some of that.

15           Does Attorney General Stein have a position?

16           **MS. BOYCE:** With respect to intervention, we do not  
17 oppose the motion for intervention, and we certainly agree that  
18 we would strive, to the extent there was duplication, to  
19 minimize.

20           **THE COURT:** In fact on some issues you may be aligned  
21 with the plaintiff.

22           **MS. BOYCE:** It is possible.

23           **THE COURT:** Do the other defendants who are here want  
24 to be heard?

25           **MR. WILLIAMS:** No, Your Honor. We consent.

1           **MR. WOOD:** No objection by the secretary of DHHS.

2           **MR. BULLERI:** No, Your Honor.

3           **THE COURT:** All right. Here is what I propose to do  
4 then about that: Grant the motion to intervene subject to  
5 reconsideration, should any of the parties who have not yet  
6 appeared through counsel ask me to do so, and that way the  
7 burden is on them if they want me to do something different.

8           Does that sound okay?

9           **MR. BOYLE:** It does, Your Honor. You probably --  
10 just housekeeping, might need to give them notice when they do  
11 make an appearance, of that.

12           **THE COURT:** You know what, they are supposed to read  
13 everything on the docket.

14           **MR. BOYLE:** I'm fine if you don't give them notice.

15           **THE COURT:** That's my view, they are supposed to read  
16 everything on the docket. Maybe I'll just say that and,  
17 Ms. Boyce might, since you're involved in getting  
18 representation for all of them, you might --

19           **MS. BOYCE:** I can certainly make sure they are aware.

20           **THE COURT:** I'll do a written order about that. It  
21 might be next week. The written order might be next week. I  
22 grant the motion to intervene. She's going to put that in the  
23 minute entry, right, Ms. Winchester?

24           **THE CLERK:** Yes, Ma'am.

25           **THE COURT:** Okay. Subject to reconsideration upon

1 motion by any defendant who has not yet made an appearance  
2 through counsel filed -- I'm not going to impose a deadline.  
3 And then we'll workout the logistics that everybody -- that  
4 Ms. Amiri pointed out, later. Okay.

5           Now I've gotten lost about where I was. I don't want  
6 to hand that out until we leave, because they'll all want to  
7 read it and not talk to me about scheduling. So whether I  
8 grant the TRO or not, the motion for preliminary injunction is  
9 still pending and I -- that does not deny the motion for  
10 preliminary injunction.

11           So what I would propose would be from the date --  
12 well, I don't know. Did you all talk about this, before I  
13 start proposing things?

14           **MR. BOYLE:** Briefly, Your Honor, with the potential  
15 suggestion that we discuss sort of offline and we can all get  
16 our schedules together and make a proposal, if the Court is  
17 willing to entertain that.

18           **THE COURT:** I mean, I'm certainly open to that. I  
19 always like it better when you all agree.

20           **MR. BOYLE:** In broad stroke, Your Honor, looking at  
21 maybe early September, backwards planning for that with  
22 briefing and any discovery we might propose.

23           **THE COURT:** That's fine. I'll be out of town through  
24 the first week of September, and I'm not canceling my vacation.  
25 Subject to that, you know, that is fine.

1           So what you are talking about is extending the TRO,  
2 if I grant it, or possibly not, depending on what it says, but  
3 combining and maybe doing everything for final resolution in  
4 September. Is that what you are talking about?

5           **MR. BOYLE:** I would think so, Your Honor, especially  
6 if we use the very good idea by Mrs. Boyce about having some  
7 expiring, if we can agree they are moot.

8           **MS. AMIRI:** Yes, Your Honor. It is possible at that  
9 point what is left is the hospitalization requirement that  
10 doesn't take effect until October 1, and the pregnancy location  
11 requirement that if there is an agreement to extend the TRO on  
12 that, then we can combine those two issues and we can propose a  
13 schedule working backwards from October 1 to resolve both of  
14 the issues.

15           **THE COURT:** And then the advise, procure, cause,  
16 unless you all agree on some language about that.

17           **MS. AMIRI:** I'm cautiously optimistic.

18           **THE COURT:** If you all agree on something, please  
19 tell me absolutely as soon as you can, because then I can stop  
20 working on it, assuming I'm comfortable with what you -- if I'm  
21 going to enter an order, I got to be comfortable with what you  
22 are saying, but it doesn't really sound like anybody is talking  
23 about agreeing to something I would have a problem with. Were  
24 there enough negatives in that?

25           Okay. I'm going to let you all talk about the

1 schedule and propose something to me -- let's see, Monday is  
2 July 3rd. As soon as you can. But if you -- but I would say,  
3 maybe on the 5th. Can you get me something -- I mean the TROs  
4 expire and if I deny it, and plaintiff is okay with waiting  
5 until September, fine. If the plaintiff wants a quicker  
6 hearing, you know, I think they are probably entitled to that.

7           If I grant it, you know, by then you will know  
8 because I will have done something and maybe we'll have some  
9 clarity. I mean, I want to do something by Friday, I guess no  
10 matter what. And four weeks from Friday -- two weeks from  
11 Friday is July 14th. So you kind of -- I don't know. I'm  
12 going to leave it up to you all.

13           If I don't hear back from you, I don't want to make  
14 you work on the 4th. Would you rather me give you the 3rd as a  
15 deadline -- or I just would like to hear from you, but if I  
16 don't hear from you, you know, I'm going to do something  
17 myself.

18           So chances are, I will not get to any sort of  
19 schedule until Wednesday, and if you all can help me out, that  
20 would be very good. If you say we're very close, can you wait  
21 until Thursday, just tell me. Okay.

22           You all are going to give me a draft. Anybody who  
23 cares to be heard about the form of any TRO that I might decide  
24 to enter is going to submit a proposed one, and what I  
25 would -- just to make your lives simpler, and mine, what I'm

1 going to ask you to do is say whoever you are, plaintiffs'  
2 proposed TRO and attach it and don't argue about it. Okay.  
3 I've heard from you. I'm pretty sure I'll be able to figure  
4 out why you have said what you have said and, you know, if you  
5 want to share beforehand, great. I appreciate you don't have a  
6 huge amount of time, but that might be nice if you can  
7 communicate, especially since there really appear to just be  
8 three of you at this point that are taking an active role, so  
9 you are can kind of narrow and focus, but I know you don't have  
10 very much time, but I don't want to hear any more argument, I  
11 just want a proposed order.

12 **MR. BOYLE:** Are we able to email to chambers and if  
13 so do we do it to that email address or do we include --

14 **THE COURT:** I'm fine with you all emailing it to  
15 Ms. Winchester and not putting it on the docket. If anybody  
16 wants it on the docket, that's fine.

17 If anybody thinks I adopt wholesale proposed orders,  
18 they have not been following my career. Is it all right -- you  
19 can speak to Ms. Winchester about where exactly to send it.  
20 Send it to me in Word.

21 **MR. BOYLE:** Yes, Your Honor.

22 **THE COURT:** I'll try to get what I give you out to  
23 you in Word from Ms. Winchester later, okay. I'll be watching.

24 If anything happens with the Governor, if somebody  
25 will file something telling me so that I know, that would be

1 very helpful. What have I forgotten from the plaintiffs'  
2 perspective?

3 **MR. IM:** I have just one brief housekeeping matter,  
4 and certainly I don't want to add anymore confusion to  
5 everything.

6 **THE COURT:** Feel free.

7 **MR. IM:** There is another case pending before Your  
8 Honor, a related case --

9 **THE COURT:** Right, Stewart.

10 **MR. IM:** That's right.

11 **THE COURT:** There is no TRO, no injunction in that  
12 one. I did go back and read the Fourth Circuit opinion and  
13 that one is strictly a First Amendment case, as I recall.

14 **MR. IM:** That's correct, Your Honor, and there is a  
15 Rule 60(b) motion pending in that case because of issues that  
16 were created by S.B. 20.

17 I just wanted to flag for Your Honor that it is our  
18 position that were the amendments to pass, that would resolve  
19 the issues raised in the 60(b) motion, however, there is still  
20 this issue that if the amendments don't pass by July 1, we  
21 might have some issues, so I just wanted to let Your Honor know  
22 that we're planning to reach out with a stipulation and see if  
23 we can submit something to the Court by consent.

24 **THE COURT:** Thank you for telling me about that. All  
25 right. Anything else for Attorney General Stein?



1           **MS. BOYCE:** No, Your Honor. Thank you.

2           **THE COURT:** For the intervenors?

3           **MR. BOYLE:** No, Your Honor, thank you.

4           **THE COURT:** For any of the other defendants?

5           **MR. BULLERI:** No, Your Honor. Thank you.

6           **THE COURT:** When you all are talking about how to  
7 manage all of this, you know, some discussion about not --  
8 managing nonrepetitive briefs, and this is just not concerning  
9 the intervenors, which I think my original order made pretty  
10 clear when I made Ms. Boyce speak for everybody, you know, I'm  
11 not wedded to that particular approach, and if the licensing  
12 defendants and the secretary are generally here as observers,  
13 you know, you can just say that, that if you ever want to be  
14 heard, you'll ask for permission, which that is a fine way to  
15 deal with it if that is going to be you all's view, but I'm not  
16 asking that that be your view.

17           I don't know about the DAs. We have to wait on the  
18 rest of them to get in the case.

19           Anything else? Court is adjourned.

20           (Court was adjourned at 12:02 p.m.)

21

22

23

24

25

C E R T I F I C A T E

I, J. ALLEN, RPR, United States District Court Reporter  
for the Middle District of North Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of  
the proceedings had in the above-entitled matter.

July 20, 2023

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J. Allen, RPR  
United States Court Reporter  
324 W. Market Street  
Greensboro, NC 27401